

Filed 1/4/19 In re E.C. CA2/4

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re E.C., a Person Coming  
Under the Juvenile Court  
Law.

B287326

(Los Angeles County  
Super. Ct.  
No.DK23197/DK23197A)

LOS ANGELES COUNTY  
DEPARTMENT OF  
CHILDREN AND FAMILY  
SERVICES,

Plaintiff and  
Respondent,

v.

E.C.,

Defendant and  
Appellant.

APPEAL from orders of the Superior Court of Los Angeles  
County, Lisa R. Jaskol, Judge. Affirmed.

Jacques Alexander Love, under appointment by the Court of Appeal, for Defendant and Appellant.

Tarkian & Associates and Arezoo Pichvai for Plaintiff and Respondent.

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## INTRODUCTION

Erick C. (father) appeals from a finding of dependency jurisdiction pursuant to Welfare and Institutions Code<sup>1</sup> section 300 over his young son, E. Father contends the single instance of domestic violence between him and E.’s mother was insufficient to constitute a risk of harm to E. We disagree and affirm.

## FACTS AND PROCEDURAL BACKGROUND

### A. *Incident, Detention, and Section 300 Petition*

Father and Alicia B. (mother) live together with their child, E., born in 2012.<sup>2</sup> On May 6, 2017, the Los Angeles County Sheriff’s Department responded to a domestic battery call at the family’s apartment. According to the initial report to the Los Angeles County Department of Children and Family Services (DCFS), mother and father “were involved in a heated verbal altercation that turned physical.” Mother stated that she and father were in a heated argument and father left. When he returned home, mother was sleeping. She woke up as father was strangling her. Mother fought off father; he then chased her around the apartment. E., then four years old, was watching television and saw father chasing mother. E. also possibly

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<sup>1</sup>All further statutory references are to the Welfare and Institutions Code unless otherwise stated.

<sup>2</sup> Mother is not a party to this appeal. We therefore relate limited information regarding the allegations against her only as necessary for background.

witnessed when “father caught up to her and started to strangle her again.” Mother reported that while father was chasing her, he was holding a piece of broken glass and was threatening her with it. Mother sustained red marks to her neck from the strangling. Father fled the home before the sheriff’s deputies arrived.

On June 6, 2017, DCFS filed a dependency petition naming E. under section 300, subdivisions (a) and (b)(1).<sup>3</sup> In count a-1, the petition as ultimately sustained alleged that mother and father “engaged in a violent altercation in the child’s presence.” Specifically, “father repeatedly strangled the mother, resulting in pain, difficulty breathing and redness to the mother’s neck.” Father also pushed mother so that she fell onto a bed, pushed her against a wall, and pinned her to the bed while strangling her. The petition further alleged that mother threw objects at father, repeatedly struck father with a broom, and scratched father’s face with her nails; as a result, father sustained injuries to his face, wrists, and forearms. DCFS alleged that this violent conduct by mother and father “endangers the child’s physical health and safety and places the child at risk of serious physical

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<sup>3</sup>Section 300 states, in relevant part, “A child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court: [(a)](a) The child has suffered, or . . . physical harm inflicted nonaccidentally upon the child by the child’s parent or guardian.. . . (b)(1) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child.”

harm, damage, and danger.” Count b-1 contained the same allegations.

The detention report filed June 6, 2017 detailed an interview between mother and a DCFS social worker (CSW) on May 9, 2017. According to mother, father learned that she was “talking” to a male co-worker and confronted her when he picked her up from work early in the morning on May 6, 2017. They argued in the car. Mother denied any physical altercation at that point and said E. was asleep in the back seat. Father became angry and told mother to get out of the car. Mother refused, so father got out. Mother then drove home. She and father exchanged text messages until she fell asleep.

Father arrived at the apartment around 11:00 a.m. while mother was sleeping. She heard E.’s steps go to the front door, “then she heard bigger steps walk towards the bedroom.” Father started yelling at her, “how could you do this?” They began to argue. E. was in the living room during this argument. Father began pushing her and she pushed him back. She threw things at him, including shoes, and “smacked him 2-3 times” with a broomstick. Father pushed her against the wall. She pushed him off but he then pushed her onto the bed. Mother stated, “he wrestled me down and pinned me down on the bed then strangled me on my neck for a few seconds.” She felt a shortness of breath but did not pass out.

Father got up, grabbed mother’s glass bong and threatened to break it if she did not give him the password for her phone. They were now in the doorway of the living room. Mother stated that father smacked the bong against the doorway and the glass shattered. Father’s hand was bloody and some glass landed on the living room table. Father pushed mother down onto the bed

and began to strangle her again. She told him, "Stop I can't breathe." She thought father was going to grab a piece of glass to use against her, but stated he did not do so and denied seeing glass in his hand. She began scratching father's face with her nails in an attempt to get him off of her. After strangling her some amount of time, mother gave father the car keys, he got up, and told mother to "clean this up." Mother stated that E. was not involved in any physical altercation but observed the incident. She stated E. was crying and saying things like, "No stop, no don't hurt mom, stop." Father then left with mother's phone. Mother called the police a few hours later, but told the CSW she did not want father to go to jail as a result of this incident.

Mother reported that she met with father after work on May 9, 2017, prior to her interview with the CSW. Mother and father "spoke for a while, discussed their mistakes," and father returned mother's phone. Mother agreed to a safety plan with the CSW, including an emergency protective order.

The CSW also interviewed E. on May 9, 2017. He told the CSW that mother and father had fought and pushed each other, and that father had also pushed E.'s grandmother and she "fell down." E. reported that father said, "stay there in other room.' He was fighting with me. I don't know what to say he talking like a weirdo or something so I punched dad in the face because he was fighting with mom." E. stated that father pushed mother and pulled her hair, and E. "kinda cried not happy only sad." E. saw the police arrive and then stated that "they just saw red stuff then my mom [choked]. Red stuff from my mom's mouth come out." He showed the CSW a spot in the living room where there appeared to be dried droplets of blood. E. said he told father, "you can't treat my mom like that." E. denied any prior incidents

between mother and father and also denied being scared of mother or father, or being scared during the incident. He told the CSW that father “is never mean to mom only the day police came.”

The CSW also interviewed maternal grandmother (grandmother) the same day. Grandmother reported that mother called her around 5:00 a.m. after her initial argument with father, that mother sounded distressed, but did not say anything about the argument becoming physical. Grandmother arrived at the home around 11:00 a.m. and saw father leaving. She saw blood on father’s head and scratches on his arms. When she went inside, she realized that there had been a physical altercation because mother’s hair was messed up and her neck was red. Grandmother told father to give back mother’s phone, but father pushed her out of the way and fled the apartment.

Grandmother saw E. watching the argument from the living room. Grandmother noticed glass on the floor of the apartment and clothing and toys thrown around the living room and bedroom. Grandmother closed the front door and locked it, and E. told her, “my dad did this to my mom” and “demonstrated both his hands around his neck” in a choking gesture. Grandmother told the CSW that mother and father had prior verbal arguments and one prior physical altercation. She also stated that father was aggressive, demanding of mother, and made statements toward mother such as, “Are you stupid?” Grandmother stated that E. was beginning to demonstrate similarly demanding behavior toward mother.

The family was living with grandmother at the time of the prior incident. Grandmother was not home at the time, but a maternal aunt had observed the incident. Grandmother stated

that E. was crying and father grabbed him. Father pushed mother onto the living room couch, “tried to ‘attack’ her,” and tried to punch mother in the face. Maternal aunt grabbed father and broke up the fight. Mother and father moved out shortly afterward.

Father also spoke to the CSW on May 9, 2017. He stated that he and mother were arguing when he picked her up from work because he found out she was cheating. After he got out of the car, mother drove away, although she does not know how to drive. E. was asleep in the backseat of the car.

After mother drove off, father went to work and then went to the residence about 1:00 p.m. to get his car keys and other items. Father stated that mother tried to hit him with a broom, but said he did not know why and denied that he had touched her at this point. He grabbed the broom from mother and screamed at E. to stay in the living room. Father and mother moved into the bedroom; father stated he “was throwing things on the floor, clothing[,] toys, ‘can’t think what else.’” Father stated that mother “went forward and tried to push me causing her to fall on the bed.” Father denied pushing mother onto the bed. Mother got up from the bed and father pushed her.

Mother began throwing things at him so he grabbed her hands. Father explained, “I tried to grab her wrists and turn her around, you know like a backwards hug, which resulted in both of us falling to the floor.” Mother got up and ran to the front door and yelled, “get out.” As he was walking toward her, she broke a glass cup on his head. Mother ran back into the bedroom. Father stated he was trying to get his keys from mother and told her, “you’re not stronger than me I’m not even using my full strength. I can drag you out of here but I’m not.” Father then

grabbed his keys, mother's phone, and left, passing grandmother. He denied breaking glass himself, denied hitting or strangling mother, and claimed he grabbed mother only "to get her to stop hitting me." When the CSW asked additional questions, father stated, "it all happened fast. Maybe I did strangle her, I don't know."

The CSW observed injuries to father including a bump on his head, scratch marks on his arms, a cut on his finger, and scratches on his face. Father stated the bump was from the broom and the cut on his finger was from glass. He stated that this was the first time an argument became physical, but that sometimes mother would slap him or try to punch him. Father agreed to the safety plan and signed it. But he stated that it was not possible to live separately from mother, as he did not have anywhere else to live.

DCFS also attached a copy of the incident report from the Sheriff's Department to the detention report. According to the report, mother stated that father began insulting her with profanities and yelling at her for being unfaithful during the car ride home. When father returned to the residence later that morning, he put both hands around her neck and applied "extreme force" as mother began gasping for air and felt dazed. Mother broke free and ran to check on E. She heard glass breaking and saw father holding a piece of broken glass with a bloody hand. Father then pushed her against the wall and began strangling her again while holding the sharp broken glass. Father told her to "grab their son and leave the apartment or else he would hurt her." E. was crying during the incident and mother feared for their safety. Responding deputies noticed that mother's neck and chin were red. Mother denied prior domestic



violence. The deputies issued an emergency protective order to mother.

The report also detailed interviews with several other family members. Paternal aunt told the CSW that mother and father often argued and she had seen mother push father. Paternal uncle reported that father stayed with him several times due to arguments with mother. He stated he had heard of one prior physical altercation, during which mother “threw stuff” at father. Paternal grandmother stated that mother was “aggressive” and she suspected that mother “hurts” father. Maternal uncle, based on his understanding from maternal aunt, echoed grandmother’s report regarding a prior physical altercation in which father was trying to strike mother and maternal aunt intervened. E. was home at the time. Maternal uncle stated that mother and father are “constantly” arguing.

The CSW reported that father came to the DCFS office on May 17, 2017 for a meeting. He stated that he was willing to cooperate but wanted to do so while living with mother and E., as it was unrealistic for them to live separately. Mother also told the CSW that the plan was for the family to live together. The CSW explained the concern with that plan to both father and mother.

The CSW assessed the family to be at “high” risk for future harm without DCFS intervention, “due to mother’s and father’s inability to protect their child from the emotional abuse caused by exposing the child to current and previous domestic violence incidents.” She noted that mother and father had declined to participate in a voluntary case through DCFS, as it would have required them to live separately. DCFS recommended detaining E. from father and releasing the child to mother.

At the detention hearing on June 7, 2017, the court found a prima facie case for detaining E. pursuant to section 300, subdivisions (a) and (b). The court ordered E. to remain placed with mother, with monitored visitation for father. The court also issued a stay-away order to both parents, with the exception of conjoint counseling.

**B. *Adjudication***

DCFS filed the jurisdiction/disposition report on July 21, 2017. In an interview with mother on July 14, 2017, mother denied any domestic violence prior to May 2017. She reiterated that in the May 2017 incident, father strangled her and she had trouble breathing. She and father pushed each other, father pushed her against a wall, and she hit father with the broom, threw things at him, and scratched him. She indicated that she wanted to get back together with father and was working on improving her communication skills. During his interview, father also stated this incident was the only time an argument became physical. He admitting pushing mother, but stated he did not push her against the wall or onto the bed and was “mostly trying to grab a hold of her.” He said he turned himself in to police and his criminal case was later dismissed. Father wanted to move back in with mother and E. and noted that next time, he would leave to “cool off” rather than escalate the situation.

The report also stated that grandmother had moved into the family’s apartment to help mother with childcare, as mother worked two jobs to support the family. DCFS noted that the parents were cooperative and participating in services, and E. appeared healthy and well.

In a last minute information filed October 16, 2017, DCFS reported that father had started domestic violence classes and

planned to enroll in parenting classes and therapy. DCFS assessed the case for a voluntary family management plan, but instead recommended court jurisdiction “based on the serious and violent issues of the case that a child was witness[] to.” The report noted that mother and father “rationalized the domestic violence incident, they have just begun court ordered programs and they have not made sufficient progress to ensure that the parents will keep the child safe.”

Mother submitted proof that as of October 5, 2017, she had completed 15 counseling sessions and E. had completed 14 sessions. Mother also began participating in a domestic violence support group. The clinician stated that E. initially “presented with symptoms of sadness, anger, confusion, fear and worry.” E. was attending weekly sessions and was making progress.

Father submitted evidence that he had completed nine sessions of a weekly domestic violence class and had made satisfactory progress. Father was also attending weekly therapy sessions, starting on August 21, 2017, including anger management therapy. Father had completed three sessions of a parent education program, and his instructor reported he was “very cooperative.”

At the adjudication hearing on October 18, 2017, on motion by counsel for mother and father, the court dismissed allegations from the petition regarding drug use by both parents (counts b-2 and b-3). The court noted mother and father had been open and honest about their drug use, made other arrangements for the care of E., and there was no evidence of current risk of harm to E.

Turning to the domestic violence allegations, mother testified at the hearing that the incident on May 6 was the only violent altercation between her and father. She confirmed that

during that incident, father “choked me a few times.” She admitted she did not initially believe she was affected by the incident, but with classes and therapy, she was learning different conflict resolution and coping strategies and also acknowledged that both she and E. were affected emotionally. She wanted to reunify with father after they had finished all of their classes.

Father testified that he had been the aggressor in the incident and did not “handle the situation the best I could.” He stated that he had learned through therapy that his inability to understand his triggers and to cope with them led to the physical altercation. He acknowledged the impact the incident could have on E., both emotionally and in terms of physical danger. He also acknowledged telling DCFS he was a victim in the incident, but said he had gained an understanding of the situation and knew mother was not responsible for his actions.

Counsel for DCFS asked the court to sustain the petition as to the domestic violence counts (a-1 and b-1). She acknowledged that it appeared to be a “one-time incident of physical altercations...but it is a very, very serious incident.” She also argued that E. was placed at risk by being present at the time and witnessing much of the incident. She indicated that DCFS was concerned about the risk for future domestic violence, given the short amount of time the parents had been involved in programs. E.’s counsel joined in the request to sustain the petition. She acknowledged the “impressive” progress made by mother and father, but stated she thought the parents were not yet ready to resume living together. She argued that the level of violence, as well as E.’s presence and attempt to get involved, were sufficient to sustain the allegations. Counsel for mother stressed mother’s progress and her testimony, and argued there

was insufficient evidence for the court to find a continuing risk of harm to E. Father's counsel agreed, noting father's progress and "the profound change in his perspective."

The court amended the allegations to remove references to a history of violent altercations, to the use of a knife, and to father's arrest. The court sustained counts a-1 and b-1 as amended. The court found that the incident was "especially serious. . . . Not a lot of time has gone by since the parents started participating in their programs. Despite the excellent progress the parents have made, I do believe that there is still a . . . substantial risk of serious harm to the child that requires the court to take jurisdiction and continue to supervise the matter for some period of time." The court therefore found E. to be a dependent under section 300 by a preponderance of the evidence. Turning to disposition, the court removed E. from father and placed him with mother. The court also lifted the stay-away order and ordered services for both parents, with continued monitored visitation for father.

Mother and father both timely appealed the jurisdictional and dispositional orders. Mother subsequently dismissed her appeal.

## **DISCUSSION**

Father's appeal challenged both the jurisdictional and dispositional orders by the dependency court. However, on June 19, 2018, while this appeal was pending, the dependency court found that mother and father were in compliance with the court's orders and returned E. to the home of both parents, with continued family maintenance services to the family.<sup>4</sup> Father

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<sup>4</sup>We granted DCFS's request for judicial notice of the court's June 19, 2018 minute order.

concedes that the dispositional issue is now moot, as E. has been returned to his care. We therefore turn to father's challenge to the jurisdictional findings under section 300.

We review the dependency court's jurisdictional findings and order for substantial evidence. (*Los Angeles County Dept. of Children & Family Services v. Superior Court* (2013) 215 Cal.App.4th 962, 966; *In re R.C.* (2012) 210 Cal.App.4th 930, 940.) Under this standard, "[w]e review the record to determine whether there is any substantial evidence to support the juvenile court's conclusions, and we resolve all conflicts and make all reasonable inferences from the evidence to uphold the court's orders, if possible." (*In re David M.* (2005) 134 Cal.App.4th 822, 828.) If a dependency petition enumerates multiple statutory bases on which a child is alleged to fall within the court's jurisdiction, we may affirm a finding that jurisdiction exists if any one of those statutory bases is supported by substantial evidence; in such a case, we need not consider whether other alleged jurisdictional grounds also enjoy substantial evidentiary support. (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762-763; *D.M. v. Superior Court* (2009) 173 Cal.App.4th 1117, 1127.)

Section 300, subdivision (a) permits the assertion of jurisdiction where "the child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parent." Section 300, subdivision (b) applies where "the child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent . . . to adequately supervise or protect the child . . ." Where the child has not suffered actual harm, the evidence must establish "that at the time of the jurisdictional hearing the

child is at substantial risk of serious physical harm. . . .’  
[Citation.]” (*In re A.G.* (2013) 220 Cal.App.4th 675, 683.)

“Although section 300 generally requires proof the child is subject to the defined risk of harm at the time of the jurisdiction hearing (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1396; *In re Rocco M.* (1991) 1 Cal.App.4th 814, 824), the court need not wait until a child is seriously abused or injured to assume jurisdiction and take steps necessary to protect the child. (*In re N.M.* (2011) 197 Cal.App.4th 159, 165.) The court may consider past events in deciding whether a child currently needs the court’s protection. (*Ibid.*) A parent’s “[p]ast conduct may be probative of current conditions” if there is reason to believe that the conduct will continue.’ (*In re S.O.* (2002) 103 Cal.App.4th 453, 461; accord, *In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1216 [(*Christopher R.*)]).” (*In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1383–1384.)

A number of courts have upheld jurisdictional findings under section 300, subdivision (b) where there was evidence that the children were exposed to domestic violence and evidence supported an “ongoing concern” about the children’s future exposure to domestic violence. (*In re E.B.* (2010) 184 Cal.App.4th 568, 576; see also *In re T.V.* (2013) 217 Cal.App.4th 126, 134–135; *In re R.C.*, *supra*, 210 Cal.App.4th at p. 942.) “[D]omestic violence in the same household where children are living . . . is a failure to protect [the children] from the substantial risk of encountering the violence and suffering serious physical harm or illness from it.” (*In re Heather A.* (1996) 52 Cal.App.4th 183, 194, disapproved on other grounds in *In re R.T.* (2017) 3 Cal.5th 622, 628.) Children can be “put in a position of physical danger from [spousal] violence” because, “for example, they could wander into

the room where it was occurring and be accidentally hit by a thrown object, by a fist, arm, foot or leg. . . .” (*In re Heather A.*; *supra*, at p. 194; see also *In re Daisy H.* (2011) 192 Cal.App.4th 713, 717.) Moreover, “[b]oth common sense and expert opinion indicate spousal abuse is detrimental to children.’ [Citations.]” (*In re E.B.*, *supra*, 184 Cal.App.4th at p. 576.) Domestic violence impacts children even if they are not the ones being physically abused, “because they see and hear the violence and the screaming.” (*In re Heather A.*, *supra*, 52 Cal.App.4th at p. 192.)

Here, father points to the fact that the physical violence was a one-time incident and to his substantial progress since then. Under these circumstances, he argues there was insufficient evidence at the time of adjudication to support the court’s finding of a risk of harm to E. in the future. We disagree.

Substantial evidence supports the dependency court’s finding of jurisdiction under section 300, subdivision (b). Although the court found evidence of only a single incident, that incident was extremely serious, including multiple instances of father choking mother so forcefully that she almost lost consciousness, pushing mother repeatedly, and screaming at both mother and E. There was also evidence that father shattered a glass and approached mother holding a shard of that glass, so that mother feared he was going to hurt her with it. Father and mother also both threw objects at each other in the apartment. It was undisputed that E. was present for much of this incident. Both he and mother stated that E. was upset and crying. Further, mother reported that E. yelled at father to stop hurting her, while E. told the CSW that he punched father to get him to stop. We also note that for several months afterward, father downplayed his role in the incident, denying that he had choked



mother and claiming he grabbed her only to prevent her from hitting him. As the dependency court noted, the progress and efforts displayed by mother and father by the time of adjudication were highly commendable, but were also fairly recent. On the basis of this evidence, the juvenile court could reasonably conclude that E. remained at risk of physical harm due to the domestic violence between father and mother. (See *In re E.B.*, *supra*, 184 Cal.App.4th at p. 576; *In re S.O.*, *supra*, 103 Cal.App.4th at p. 461.)

Father contends that several of the domestic violence cases are factually distinguishable as they involve additional factors or more extensive violence. (See *In re E.B.*, *supra*, 184 Cal.App.4th at p. 573 [involving ongoing domestic violence]; *In re Giovanni F.* (2010) 184 Cal.App.4th 594, 601 [citing multiple incidents of violence, including in a moving vehicle with the child, as well as father's denial that he was violent and refusal to comply with safety plan].) But each of the cases cited found jurisdiction based on the facts in that case; none of them suggested that facts such as those present here would be insufficient to establish jurisdiction. We are not persuaded that the court erred in finding jurisdiction over E.

#### **DISPOSITION**

The jurisdictional orders are affirmed.

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COLLINS, J.

We concur:

MANELLA, P. J.

WILLHITE, J.